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Oct 29, 2004

Comments for the Record

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**Docket No. FMCSA-2004-18898 and FMCSA-1998-3639
FMCSA 2010 Initiative**

- 1. How effective is FMCSA's current compliance review (CR) process? What is working now? Not Working?**
 - A. CRs are an effective method of identifying deficiencies in compliance with FMCSR.
 - B. A performance based method of selecting motor carriers for compliance reviews such as SafeStat should be used to target limited enforcement resources and provide an incentive for motor carriers to achieve and maintain satisfactory safety results that allow them to avoid a full CR. (data quality, timeliness, etc. currently being addressed will improve the selection system). Carriers must have visibility to the performance results so they can monitor and implement interventions themselves to driver safety improvements.
 - C. Resources should focus on follow up CRs of Conditional or Unsatisfactory rated carriers at least annually until they have demonstrated a satisfactory compliance with FMCSR. Allowing carriers to maintain a Conditional rating for years should not be acceptable.
 - D. Complaints that are inconsistent with the Carriers SafeStat/Safersys results should not result in a CR when there are a sufficient number of random roadside inspections to determine the motor carrier's level of compliance. As an example 10,000 random roadside inspections over a 24 month period conducted by trained enforcement officials is a better indicator of the motor carrier's vehicle maintenance program than one complaint. In these cases, investigations of the complaint should be completed by phone, electronic, fax, mail, etc. when there have been a sufficient number of random roadside inspections to make a determination of the carrier's level of compliance. Another consideration might be to look at the number of complaints relative to the total number of drivers.
 - E. Complaints that are non-substantial or frivolous should be dismissed without inquiry.
 - F. CRs should place greater weight on accident rates (outcomes). Compliance with HOS should have equal weight to the other areas of the regulations reviewed during the CR.
- 2. What Alternative methods should FMCSA consider for determining carrier safety fitness and for addressing unsafe behaviors?**
 - A. Utilize Safestat or other statistically valid performance based method for selection of carriers for CRs.

- B. Safety Ratings should be presented with SafeStat data. The two systems of determining carrier safety fitness should be combined. This would also eliminate having two time periods used for carrier compliance measurement.
- C. SafeStat should present a driver safety score based on accident, roadside inspection history, moving violations and should be made available to motor carriers for making hiring decisions, for consideration at annual review, exception management, and on-going training.
- D. The results of on-road performance should be as important to the driver and as publicly available to the motor carrier as Motor Vehicle Records. Making this on-road performance information available will establish accountability. Drivers will be concerned with their on road performance just like they are with their motor vehicle record. This will result in better inspections of equipment, improved compliance with hours of service regulations and safer operation of the vehicle.
- E. Certain driver scores should result in disqualification and/or require remedial action such as completion of a compliance seminar or a defensive driving course for reinstatement of driving privileges.
- F. Establish a National Employer Violation Notification System similar to the successful program administered by the State of California. The California Employer Pull Notice Program notifies carriers of changes to their driver's license status i.e. Revocations, suspensions, convictions, endorsement changes, etc. This will allow the motor carriers to take immediate action to remove unsafe or unqualified drivers from the road. The requirement for the driver to self report often does not occur.
- G. Establish a central repository for maintaining positive drug test results, and require Medical Review Officers (MRO) to report positive results to the central repository and require motor carriers to inquire about positive results prior to hiring a driver. Store and make available documentation of driver satisfactory completion of SAP requirements. Frequently pre-employment positives go undiscovered during background checks and hiring processes. This loophole needs to be closed.

3. What should be the focus of FMCSA's safety analysis process? Motor Carriers? Drivers? Owners? Other people or entities associated with safety?

- A. Motor Carriers should continue to be the main area of emphasis. With emphasis placed on those with poor performance (such as A & B rated carriers) and those with Conditional and/or Unsatisfactory Safety Ratings.
- B. New Entrant Motor Carriers should be subject to a full CR with and a safety rating established within 18 months. (Including International New Entrants). This will be the opportunity to assess the Owner's, Directors and other company management and review the safety results of companies they have previously been associated with.
- C. Greater emphasis should be placed on assisting motor carriers in identifying drivers with habitual unsafe or non compliant on road performance (across multiple employers/operating authorities). Disqualifications or remedial action should be required for the driver to regain driving privileges.
- D. Seek out ways to address unsafe driving behaviors by non CMV drivers. (Studies show that approximately 70% of fatal car-truck crashes are attributed to the automobile driver and not the truck driver). The agencies safety goals will not be achieved without a significant effort in this area.

4. Should FMCSA present its safety evaluations (i.e. the SafeStat safety evaluation areas) to the public? How?

- A. Yes. SafeStat is a good tool for making safety performance available to the public. The steps currently being taken by FMCSA to improve data quality and timeliness are positive steps for improving the data and accuracy of the motor carriers Safety Evaluation Area scores.

- B. The Accident SEA should be made publicly available as quickly as possible. Increase visibility will allow scrutiny of the data and methodology and keep the focus on improvement.
- C. The methodology used to calculate SEA scores should be reviewed with industry input on a routine basis and changed based on validation results, emerging trends and methodologies, etc.

5. What should be the key attributes of a program to assess motor carrier safety?

- A. Performance Based - target those with poor on-road results and provides an incentive to carriers to achieve exception safety results.
- B. Accurate and timely data
- C. Consistent -selection and application of audit protocols across the country.
- D. Efficient -targeted deployment of agency resources.
- E. Effective- identifies and targets the regulations most likely to reduce crashes when complied with.
- F. Clarity- that will motor carriers can perform self audits using similar protocols as the agency to identify corrective actions needed.

6. How should safety be measured? This measurement may be used to focus FMCSA resources and to assess safety under 49 U.S.C. 31144, Safety fitness of owners and operators.

A. What data elements (crash, inspection results, violations, and financial conditions) are the best indicators of safe (or unsafe) operations? Are there other important safety indicators we are currently overlooking?

- 1) On road safety performance is the best safety indicator.
- 2) Consider driver Motor Vehicle Records (moving violations) along with road side inspection results and crashes. There may be an opportunity to tie in the CDLIS and the Motor Carrier Profile to get a better picture of driver's safety performance.
- 3) Driver stability and management strength often correlate into safety performance. Safety Performance and Driver Stability are objective measures while Management Strength is a subjective measure.

B. How should FMCSA consider historical data when measuring safety?

- 1) Historical performance and trends in performance data should be used to target carriers for CRs.
- 2) Patterns of non compliance should be used to assessing civil penalties to motor carriers and to drivers in violation.

C. How should FMCSA consider unique characteristics of the operations (hazardous materials, passenger, others) when measuring safety?

- 1) Many companies have very complex operations with certain business units have one set of characteristics while another has a different set of characteristics. Due to the often convoluted nature of trucking operations emphasis should be placed on safety performance and not on characteristics of the operation.

7. What compliance and enforcement tools are most effective? Currently FMCSA's interventions include issuing warning letters, issuing civil penalties, and placing motor carriers out-of-service.

A. What types of interventions are most effective?

- 1) Placing drivers out of service without a civil penalty is not effective in changing driver behavior. A uniform schedule of fines should be included in the regulations that result in significant fines assessed against the driver for driver out-of-service violations such as HOS, driver qualifications, drugs & alcohol, etc. Fines should be assessed against the driver for vehicle out-of-service violations that should have been detected by the driver during a pre-trip inspection. Carriers should be fine for vehicle out-of-service violations that are the result of poor maintenance procedures.
- 2) Minimum levels of financial responsibility should be increased with consideration given to a minimum level of required self retention. The current minimum of financial responsibility of \$750,000 was established January 1, 1985. This amount has not kept up with medical and general inflation over the past 18 years. Higher levels of financial responsibility and/or a minimum level of self retention will result in either the trucking company making a greater commitment of safety resources if they are self insured or an insurance carrier getting more involved to control the increased risk of financial loss.
- 3) Establish through legislation some forms of shipper liability for truck crashes such as in the "Cradle to grave" liability of Hazardous Waste Generators. This will result in some oversight through the selection of motor carriers by shippers.
- 4) Assist Motor Carriers in identifying unsafe drivers based on performance results in MICMS data (accidents, violations, inspections).
- 5) Motor Carriers that are unwilling or unable to comply with the regulations and/or who have poor on road performance should be placed out of service.
- 6) Requiring electronic on board recorders (EOBR) for compliance with HOS regulations will speed up CR.
- 7) Deploy technologies for targeted roadside inspections such as the Thermal Eye to identify vehicles with brake and/or tire problems and remove them from service.

B. How should FMCSA use history and characteristics of the motor carrier's operations in determining which intervention is appropriate?

- 1) The severity of intervention with regards to motor carriers should be tied to a carrier's performance history.
- 2) Performance indicator trends reflecting significant improvement or degradation should be taken into consideration.
- 3) The severity of intervention with regard to drivers should be tied to a driver's performance history.

Respectfully submitted,

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